

Minneapolis Community Development Agency

## Request for City Council Action

Date: September 16, 2003

To: Council Member Lisa Goodman, Community Development Committee

Prepared by Charles Curtis, Financial Analyst, Phone 612-673-5069

Approved by Lee Sheehy, CPED Executive Director  
Chuck Lutz, CPED Deputy Executive Director \_\_\_\_\_

**Subject:** Request for Final Approval of up to \$85,000,000 for City of Minneapolis Tax-exempt 501 (c)(3) Revenue Bonds Series 2003 for the Guthrie Theatre Foundation.

**Previous Directives:** Preliminary Revenue Bond Approval granted on July 25, 2003. The MCDA and the City have approved various actions over the past two years related to this proposed project. The MCDA has executed a Redevelopment Contract with the Guthrie Theatre Foundation providing for land sales, public parking and other public improvements.

**Ward:** 2 The site includes two parcels of land, the first bounded by West River Road, 10<sup>th</sup> Avenue South, 2<sup>nd</sup> Street South and Chicago Avenue South, and the Second bounded by 2<sup>nd</sup> Street South, 9<sup>th</sup> Avenue South, Washington Avenue South, and Chicago Avenue South.

**Neighborhood Group Notification:** Downtown East Neighborhood has been notified.

**Consistency with *Building a City That Works*:** The proposed project is consistent with Goal 4 of preserving and enhancing the urban institutes and amenities that define Minneapolis.

**Comprehensive Plan Compliance:** The proposed project complies with the Policies of the Minneapolis Plan.

**Zoning Code Compliance:** The proposed project is in compliance.

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**Impact on the MCDA Budget:**

- ☐ No financial impact
- ☐ Action requires an appropriation increase to the MCDA Budget
- ☐ Action provides increased revenue for appropriation increase
- ☐ Action requires use of contingency or reserves
- ☒ Other financial impact (Explain): The issuance of tax-exempt revenue bonds will generate annual administrative fees that are used to support the small business assistance programs of the City.

**Living Wage/Business Subsidy:** The proposed project is a 501 (c)(3) conduit financing that is not subject to Living Wage/Business Subsidy. The Guthrie Theatre Foundation has agreed to execute a Business Subsidy Agreement as part of the Redevelopment Contract.

**Job Linkage:** Does not apply to Revenue Bond financing. The Guthrie Theatre Foundation has agreed to execute a Job Linkage Agreement as part of the Redevelopment Contract.

**Affirmative Action Compliance:** The Guthrie Theatre Foundation has submitted its Affirmative Action Plan. Closing will not occur until the plan is approved.

**RECOMMENDATION:**

**City Council Recommendation:** The Executive Director recommends that the City Council adopt the attached Resolution, a summary of which will be published, giving Final Approval to the issuance of up to \$85,000,000 of City of Minneapolis Tax-exempt 501 (c)(3) Revenue Bonds, Series 2003, for the Guthrie Theatre Foundation.

Background/Supporting Information

PROJECT LOCATION & DESCRIPTION:

The proposed project will be located on two parcels of land, the first bounded by West River Road, 10<sup>th</sup> Avenue South, 2<sup>nd</sup> Street South and Chicago Avenue South, and the second bounded by 2<sup>nd</sup> Street South, 9<sup>th</sup> Avenue South, Washington Avenue South and Chicago Avenue South.

The proposed project consists of the construction of a three-theater complex of approximately 285,000 square feet with an aggregate seating capacity of approximately 2,150, together with associated production and administrative space, an educational center and associated retail, beverage and food service facilities.

TYPE OF FINANCING:

<u>Sources:</u>	Revenue Bonds	\$ 85,000,000
	State Grant	25,000,000
	Equity (Pledges)	15,000,000
	Total	<u>\$125,000,000</u>

<u>Uses:</u>	Construction	\$ 96,000,000
	Contingency	500,000
	Land Purchase	3,870,000
	Professional Fees	15,680,000
	Relocation Costs	1,435,000
	Administration Costs	3,250,000
	Restaurant Finish	750,000
	Project Contingency	3,015,000
	Total	<u>\$125,000,000</u>

PRESENT EMPLOYMENT: 291

NEW EMPLOYMENT: 62

ASSESSOR'S ESTIMATED ANNUAL TAX INCREASE: Tax-exempt Facility

AFFIRMATIVE ACTION COMPLIANCE: Affirmative Action Plan has been submitted. Closing will not occur until the plan is approved.

MCDA IRB POLICIES:

Job Component	Minimum standard of one (1) job per 1,000 square feet of building area.
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Guthrie Theatre Foundation: NA

Property Improvements

No more than 25% of the bond proceeds may be used for land and acquisition. If purchasing an existing building, an amount equal to at least 15% of the acquisition cost must be spent on rehabilitation expenditures.

Guthrie Theatre Foundation: In compliance.

Development Standards

Compliance with the Land Use Plan of the City's Comprehensive Plan.

Guthrie Theatre Foundation: In compliance.

Equipment Financing

Limited to companies that create or preserve a significant number of jobs, and the equipment financed must be sufficiently secured. No more than 10% of the bond proceeds may be used to finance movable equipment not constituting a fixture.

Guthrie Theatre Foundation: In compliance.

Restaurant/Bank

IRB financing is allowed for a restaurant or a bank if it is built or rehabilitated in an MCDA Redevelopment Area. No more than 25% of the bond proceeds can be used to finance retail food and beverage establishments, automobile dealerships or recreation or entertainment facilities.

Guthrie Theatre Foundation: In compliance.

Tax-exempt Institution

Refinancing is permitted when new jobs are created or when a significant number of jobs is preserved; any interest cost savings must directly reduce patient costs.

Guthrie Theatre Foundation: NA

IRB CAP:

The project is not subject to the volume cap, in that the project is exempt from income tax under Internal Revenue Code Section 501(c)(3) for its exempt purposes and is classified thereunder as a non-profit organization.

BOND COUNSEL:

Dorsey & Whitney

UNDERWRITER:

RBC Dain Rauscher

COUNCIL MEMBER INFORMED:

Yes Ward 2

CITY COUNCIL PRELIMINARY  
APPROVAL:

July 25, 2003

MINNESOTA DEPARTMENT OF  
EMPLOYMENT AND ECONOMIC  
DEVELOPMENT APPROVAL:

Application to be submitted. Closing will not occur until approval is granted.

AUTHORIZING THE ISSUANCE AND SALE  
OF REVENUE BONDS OF THE CITY ON BEHALF OF  
GUTHRIE THEATER FOUNDATION AND THE EXECUTION OF DOCUMENTS

WHEREAS, this Council has received a proposal that the City of Minneapolis (the “City”) issue its revenue bonds (the “Bonds”) under Minnesota Statutes, Sections 469.152 to 469.165 (the “Act”) for the purposes of financing a portion or all of the cost of a proposed project (the “Project”), on behalf of Guthrie Theater Foundation, a Minnesota nonprofit corporation (the “Corporation”), and paying certain costs of issuance of the Bonds.

WHEREAS, the Project consists of the construction and equipping of a three-theater complex of approximately 285,000 square feet with an aggregate seating capacity of approximately 2,150, together with associated production and administrative space, an educational center and associated retail, beverage and food service facilities to be operated by the Corporation and located in the City on 2 parcels of land, the first bounded by West River Road, 10<sup>th</sup> Avenue South, 2<sup>nd</sup> Street South and Chicago Avenue South, and the second bounded by 2<sup>nd</sup> Street South, 9<sup>th</sup> Avenue South, Washington Avenue South and Chicago Avenue South

WHEREAS, at a public hearing, duly noticed and held on July 15, 2003, in accordance with the Act and Section 147(f) of the Internal Revenue Code of 1986, as amended, on the proposal to undertake and finance the Project, all parties who appeared at the hearing were given an opportunity to express their views with respect to the proposal to undertake and finance the Project, and interested persons were given the opportunity to submit written comments to the City Clerk before the time of the hearing.

WHEREAS, this Council hereby finds that the issuance and sale of up to \$85,000,000 aggregate principal amount of the Bonds in one or more series under the authority contained in the Act to finance the Project would promote the purposes contemplated and described in Section 469.152 of the Act and further promote the public purposes and legislative objectives of the Act and is in the best interest of the City and the City hereby determines to issue and sell such Bonds.

WHEREAS, the proceeds of the Bonds will be lent (the “Loan”) by the City to Corporation, in order to finance all or a portion of the cost of the Project and to pay certain costs of issuance of the Bonds.

WHEREAS, pursuant to a Loan Agreement (the “Loan Agreement”), to be entered into between the City and Corporation, a draft of which has been presented to the Council at this meeting and which has been reviewed to the extent deemed necessary, the Corporation will unconditionally agree to repay the Loan made by the City under the Loan Agreement in specified amounts and at specified times sufficient to make the necessary payments of principal of, premium, if any, and interest on the Bonds, when due. In addition, the Loan Agreement contains provisions relating to the payment by Corporation of administrative costs of the Bond Trustee (as hereinafter defined), the administrative fee of the City,

indemnification, insurance and other agreements and covenants which are required by the Act or which are permitted by the Act and which the City and Corporation deem necessary or desirable for the sale of the Bonds.

WHEREAS, pursuant to an Indenture of Trust (the "Bond Indenture") to be entered into between the City and U.S. Bank National Association, as Trustee (the "Bond Trustee"), a draft of which has been presented to the Council at this meeting and which has been reviewed to the extent deemed necessary, the City assigns and pledges all of its right, title and interest in the Loan Agreement (other than the right of the City for indemnification and administrative expenses) to the Bond Trustee. In addition, the Bond Indenture, among other things, sets the interest rates, maturity dates and redemption provisions for the Bonds, establishes the various funds and accounts for the deposit and transfer of money and contains other provisions which are required by the Act or which are permitted by the Act and which the City and Corporation deem necessary or desirable in connection with the sale of the Bonds.

WHEREAS, the Bonds will be special limited obligations of the City payable solely from amounts payable by Corporation under the Loan Agreement, other than to the extent payable from the proceeds of the Bonds. The Bonds shall not be payable from or charged upon any funds other than the revenue pledged to the payment thereof, nor shall the City be subject to any liability thereon. No holder or holders of any Bond shall ever have the right to compel any exercise of the taxing power of the City to pay any such Bond or the interest thereon, nor to enforce payment thereof against any property of the City except the Loan Agreement. The Bonds shall not constitute a debt of the City within the meaning of any charter, constitutional or statutory limitation.

WHEREAS, the Bonds will be purchased from the City by RBC Dain Rauscher Incorporated, U.S. Bancorp Piper Jaffray Inc. and Wells Fargo Brokerage Services, LLC (the "Underwriters") pursuant to a Bond Purchase Agreement (the "Bond Purchase Agreement") between the City, Corporation and RBC Dain Rauscher Incorporated on behalf of itself and the other Underwriters, a draft of which has been presented to the Council at this meeting and which has been reviewed to the extent deemed necessary.

WHEREAS, a draft of an Official Statement, related to the Bonds, has been presented to the Council at this meeting and has been reviewed to the extent deemed necessary. The Official Statement will be distributed by the Underwriters to potential purchasers of the Bonds.

NOW, THEREFORE, BE IT RESOLVED, in order to provide for the financing of all or a portion of the costs of the Project, the City hereby authorizes the issuance of the Bonds as revenue bonds under the Act in one or more series, in the aggregate principal amount of up to \$85,000,000. The Mayor, the City Clerk and the City Finance Officer are hereby authorized to approve the purchase price of the Bonds, provided that the purchase price equals or exceeds 98% of the principal amount of the Bonds; the aggregate principal amount of the Bonds, provided that such principal amount is not in excess of \$85,000,000; the maturity schedule of the Bonds, provided that the Bonds mature at any time or times in such amount or amounts not exceeding 30 years from the date of issuance thereof; the provisions for prepayment and redemption of the Bonds prior to their stated maturity; and the initial interest rates for any series of Bonds,

provided that the initial interest rate on any series of Bonds shall not exceed 5.00% per annum. Such approval shall be conclusively evidenced by the execution of the Bond Purchase Agreement as provided herein. The issuance of the Bonds to finance the Project shall be subject to approval of the Project by the Minnesota Department of Employment and Economic Development.

FURTHER RESOLVED, each Bond shall be executed on behalf of the City by the manual or facsimile signatures of the Mayor, the City Clerk and City Finance Officer, and its corporate seal (which may be in facsimile) shall be thereunto affixed, imprinted or engraved. The Bonds when executed and delivered shall contain a recital that they are issued pursuant to the Act. The Bond Trustee is hereby designated as authenticating agent pursuant to Minnesota Statutes, Section 475.55. If any of the officers who shall have signed or sealed any of the Bonds shall cease to be such officers of the City before the Bonds so signed and sealed shall have been actually authenticated by the Bond Trustee or delivered by the City, such Bonds nevertheless may be authenticated, issued and delivered with the same force and effect as though the person or persons who signed or sealed such Bonds had not ceased to be such officer or officers of the City.

FURTHER RESOLVED, the Bond Indenture and the Loan Agreement are hereby made a part of this Resolution as fully as though set forth in full herein and are hereby approved in the form submitted to this meeting, and the Mayor, City Clerk and City Finance Officer are hereby authorized and directed to execute, acknowledge and deliver the Bond Indenture and the Loan Agreement on behalf of the City with such changes, insertions and omissions therein as do not change the substance of the Bond Indenture or the Loan Agreement and as may be approved by the Mayor, City Clerk and City Finance Officer, such approval to be evidenced conclusively by their execution of the Bond Indenture and the Loan Agreement.

FURTHER RESOLVED, the City hereby consents to the distribution by the Underwriters to potential purchasers and purchasers of the Bonds of the Official Statement in substantially the form submitted to the Council at this meeting. The City has not and will not participate in the preparation of the Official Statement and has made no independent investigation with respect to the information contained therein or in the appendices thereto, and the City assumes no responsibility for the sufficiency, accuracy or completeness of such information.

FURTHER RESOLVED, the Bond Purchase Agreement is hereby made a part of this Resolution as fully as though set forth in full herein and is hereby approved in the form submitted to this meeting and, upon the determination of the terms of the Bonds (within the limitations set forth herein) and the execution of the Bond Purchase Agreement by the Corporation and RBC Dain Rauscher Incorporated by on behalf of itself and the other Underwriters, the Mayor, City Clerk and City Finance Officer are hereby authorized and directed to execute the Bond Purchase Agreement on behalf of the City, with such further changes, insertions or omissions therein as do not change the substance of the Bond Purchase Agreement and as may be approved by the Mayor, City Clerk and City Finance Officer, such approval to be evidenced conclusively by their execution of the Bond Purchase Agreement.



FURTHER RESOLVED, the Mayor, the City Clerk, the City Finance Officer and all other officers of the City are hereby authorized and directed to execute and deliver all other documents which may be required under the terms of the Bond Indenture, the Loan Agreement or the Bond Purchase Agreement, and to take such other action as may be required or appropriate for the performance of the duties imposed thereby or to carry out the purposes thereof.

FURTHER RESOLVED, in the absence or disability of the Mayor, the City Clerk, the City Finance Officer or any other officer of the City named in any instrument to be executed on behalf of the City in connection with the issuance of the Bonds, the acting Mayor, Assistant City Clerk, Assistant Finance Officer or other officer may execute such instrument. The execution of any instrument by an officer of the City shall be conclusive evidence of its approval.

FURTHER RESOLVED, the City Finance Officer is hereby designated for all purposes of the Loan Agreement, the Bond Indenture and the Bond Purchase Agreement as the City official authorized to execute on behalf of the City certificates, requests or consents as provided in the Loan Agreement, the Bond Indenture and the Bond Purchase Agreement.

FURTHER RESOLVED, the Bonds are hereby designated "Program Bonds" and are determined to be within the "Economic Development Program" and the "Program", all as defined in Resolution 88R-021 of the City adopted January 29, 1988, and as amended by Resolution 97R-402 of the City adopted December 12, 1997.